

REQUEST FOR COUNCIL ACTION

MEETING
DATE: 11/03/03

211 -

AGENDA SECTION: PUBLIC HEARINGS	ORIGINATING DEPT: PLANNING DEPARTMENT	ITEM NO. E-9
ITEM DESCRIPTION: Type III, Phase I (#03-04) Appeal of the Type III, Phase I (#03-19) Variance Denial		PREPARED BY: Brent Svenby Planner

October 29, 2003

City Planning and Zoning Commission Recommendation:

On September 10, 2003, the City Planning and Zoning Commission denied a variance request of the applicant, Frank Kottschade, for property located along the west side of TH 63 and along the south side of 40th Street SW. The property is in the M-1 (Mixed Commercial-Industrial) zoning district. The applicant requested a total of 6 variances for the Quarry operation, the Commission approved 4 of the 6 variances.

The applicant requested a variance to Section 62.1107, 2) e) 1 & 2 of the Rochester Zoning Ordinance and Land Development Manual as part of Conditional Use Permit for the operation of a Quarry on the property. For Quarry operations the reclamation standards require that at least 8 deciduous & 8 evergreen trees shall be planted for each disturbed acre and 25% of required trees planted within 30 feet of perimeter. The applicant requested a variance to not plant any of the plantings. The CPZC denied the variance, however, stated that the plantings were to be done at the time the property is developed.

Council Action Requested:

Approve or deny the variance appeal by the applicant based on the original staff report and attachments submitted to the City Planning and Zoning Commission at their September 10, 2003 meeting.

Attachments:

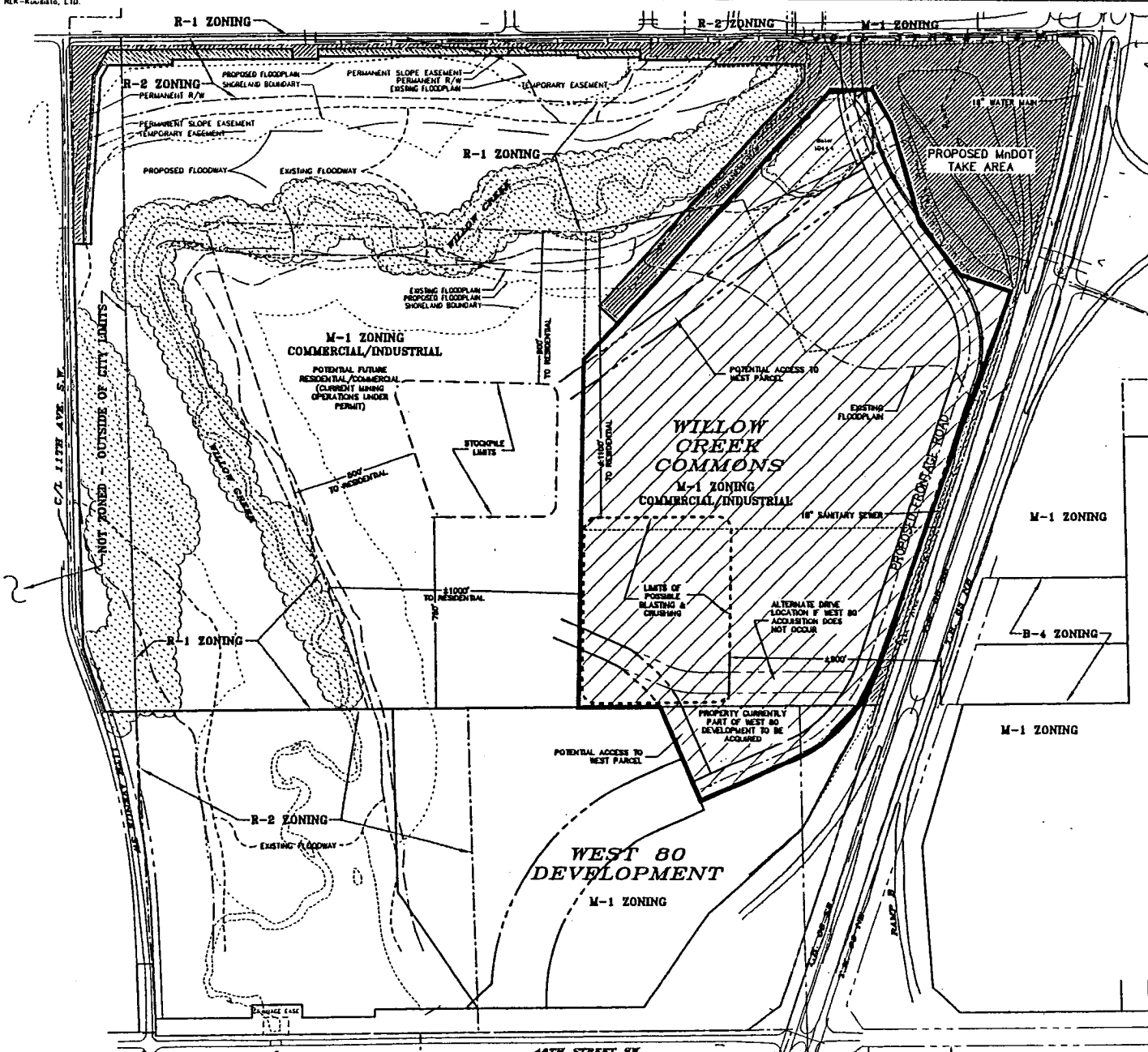
1. Copy of Minutes of the September 10, 2003, City Planning & Zoning Commission meeting.
2. Copy of Staff Report and attachments submitted to the City Planning and Zoning Commission, dated September 5, 2003.

Distribution:

1. City Administrator
2. City Attorney
3. Planning Department File
4. Applicant: This item will be considered by the Council sometime after 7:00 p.m. on Monday, November 3, 2003, in the Council/Board Chambers at the Government Center, 151 SE 4th Street.

COUNCIL ACTION: Motion by: _____ Second by: _____ to: _____

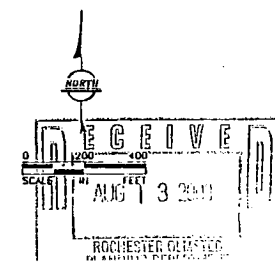
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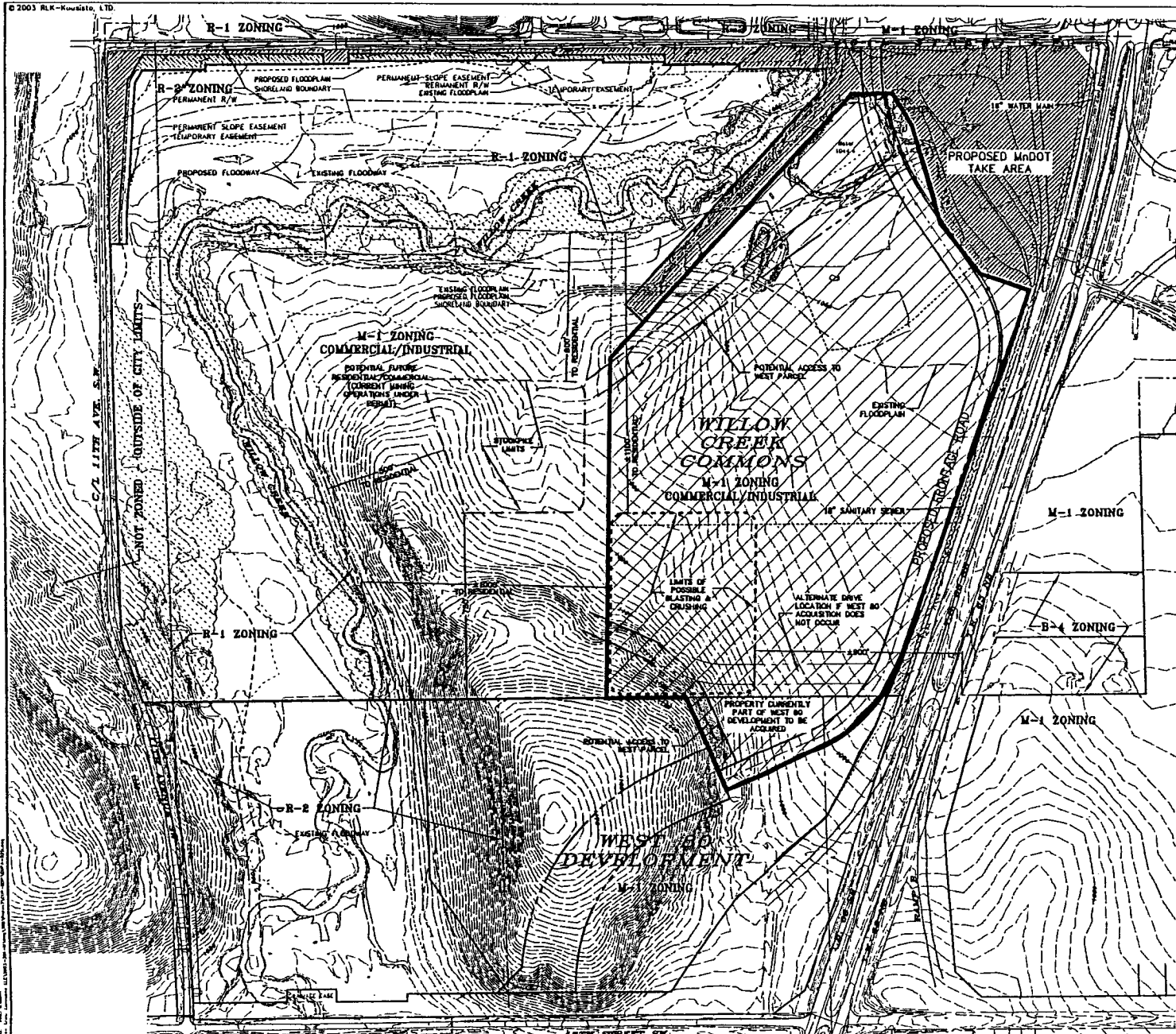
Call 48 Hours before digging
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 Twin Cities Area 851-454-0002
 MN. Toll Free 1-800-252-1168

NOTES
 DEVELOPMENT DENSITY, INTENSITY, AND LAND USE WILL BE PLANNED IN ACCORDANCE WITH THE CITY OF ROCHESTER ZONING ORDINANCE.
 THE PROPOSED FRONTAGE ROAD IS DESIGNATED A CITY COLLECTOR.
 GDP PROJECT AREA = 169.0 ACRES

- ZONING BOUNDARY
- PARCEL LIMITS
- PROPERTY LIMITS
- GDP PROJECT AREA
- AREA TO BE DISTURBED
- MNDOT CONSTRUCTION/ACQUISITION AREA
- EXISTING TREE BUFFER AREA



PREPARED BY: [blank] DESIGNED BY: [blank] CHECKED BY: [blank]		DATE: [blank]
REVISIONS: [blank]		PROJECT: [blank]
PROJECT: WILLOW CREEK COMMONS LOCATION: ROCHESTER, MINNESOTA TITLE: CUP - LAND ALTERATION SITE PLAN		SHEET NO.: 2/5 TOTAL SHEETS: 5



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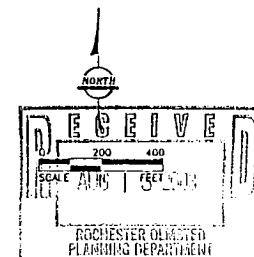
NOTES

DEVELOPMENT DENSITY, INTENSITY, AND LAND USE WILL BE PLANNED IN ACCORDANCE WITH THE CITY OF ROCHESTER ZONING ORDINANCE.

THE PROPOSED FRONTAGE ROAD IS DESIGNATED A CITY COLLECTOR.

GDP PROJECT AREA = ± 69.0 ACRES

- ZONING BOUNDARY
- PARCEL LIMITS
- PROPERTY LIMITS
- GDP PROJECT AREA
- AREA TO BE DISTURBED
- Mndot CONSTRUCTION/ACQUISITION AREA
- EXISTING TREE BUFFER AREA



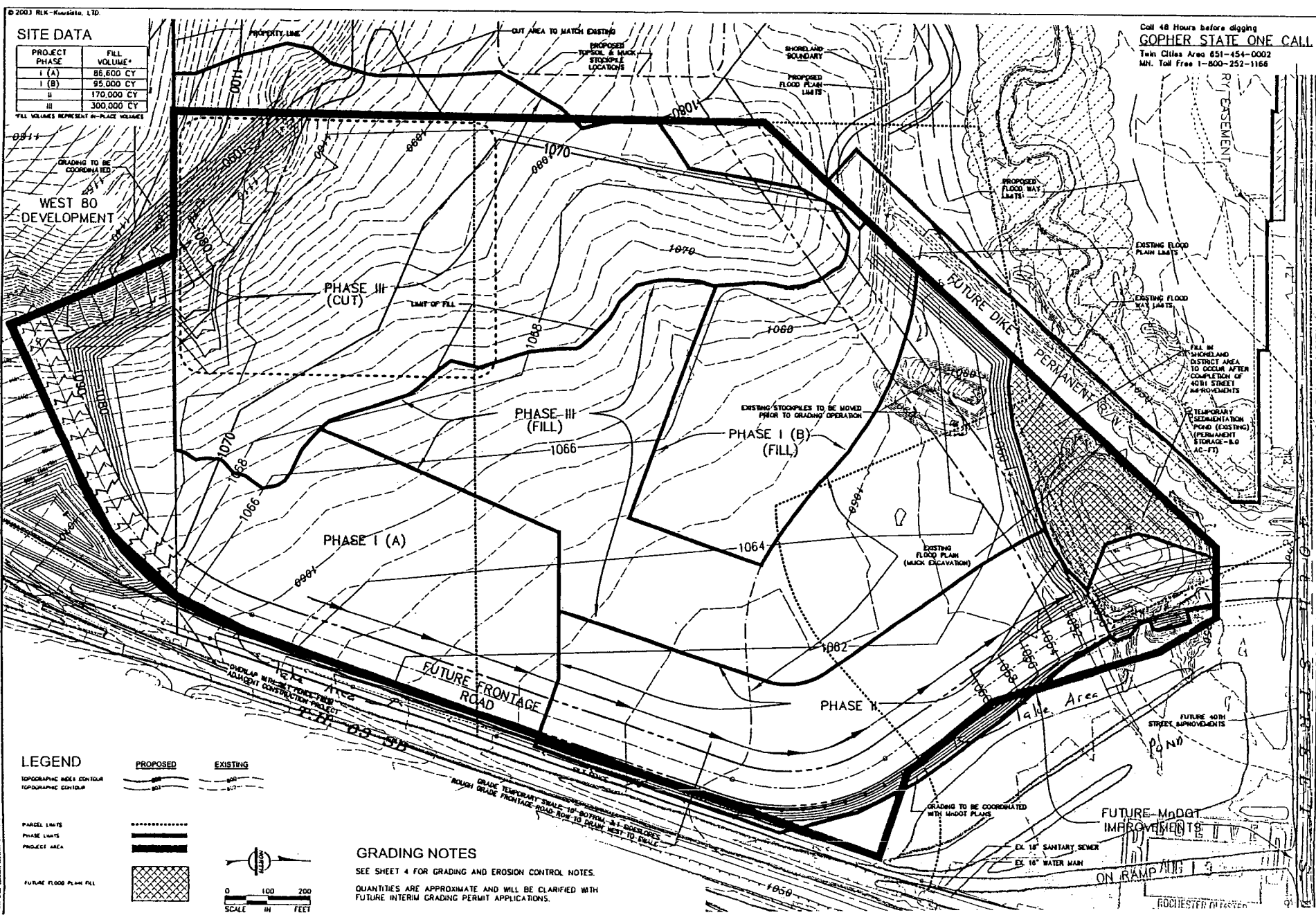
REVISIONS
 1. Survey, staking, and other work was completed by the City of Rochester, Minnesota, on the date of the Survey of the State of Minnesota.
 MICHELLE JACOBSON, CLERK
 DATE: 1/11/03
 1/11/03

DATE	BY	REVISION
1/11/03	CL	1. Survey, staking, and other work was completed by the City of Rochester, Minnesota, on the date of the Survey of the State of Minnesota.

WILLOW CREEK COMMONS
 ROCHESTER, MINNESOTA
 CUP LAND ALTERATION
 PLAN WITH
 EXISTING CONTOURS

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SITE DATA

PROJECT PHASE	FILL VOLUME*
I (A)	86,600 CY
I (B)	95,000 CY
II	170,000 CY
III	300,000 CY

*FILL VOLUMES REPRESENT IN-PLACE VOLUMES

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 Twin Cities Area 651-454-0002
 MN. Toll Free 1-800-252-1166

REVISIONS

NO.	DATE	BY	CHKD.	DESCRIPTION
1	10/11/01	W. J. JACOBSON	W. J. JACOBSON	ISSUED FOR PERMIT
2	10/11/01	W. J. JACOBSON	W. J. JACOBSON	ISSUED FOR PERMIT
3	10/11/01	W. J. JACOBSON	W. J. JACOBSON	ISSUED FOR PERMIT
4	10/11/01	W. J. JACOBSON	W. J. JACOBSON	ISSUED FOR PERMIT
5	10/11/01	W. J. JACOBSON	W. J. JACOBSON	ISSUED FOR PERMIT
6	10/11/01	W. J. JACOBSON	W. J. JACOBSON	ISSUED FOR PERMIT
7	10/11/01	W. J. JACOBSON	W. J. JACOBSON	ISSUED FOR PERMIT
8	10/11/01	W. J. JACOBSON	W. J. JACOBSON	ISSUED FOR PERMIT
9	10/11/01	W. J. JACOBSON	W. J. JACOBSON	ISSUED FOR PERMIT
10	10/11/01	W. J. JACOBSON	W. J. JACOBSON	ISSUED FOR PERMIT

WILLOW CREEK COMMONS

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3	10/11/01	W. J. JACOBSON	W. J. JACOBSON	ISSUED FOR PERMIT
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9	10/11/01	W. J. JACOBSON	W. J. JACOBSON	ISSUED FOR PERMIT
10	10/11/01	W. J. JACOBSON	W. J. JACOBSON	ISSUED FOR PERMIT

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Engineering · Planning · Surveying · Landscape Architecture

October 7, 2003

Via fax: 507-287-2275

Mr. Brent Svenby
Rochester – Olmsted Consolidated Planning Department
2122 Campus Drive SE
Rochester, MN 55904-4744

Re: Willow Creek Commons – Rochester, MN
Appeal to Variance Denial - Variance Request No. 03-19
Variance 62.1107 2) e) 1 and 2 (At least 8 deciduous and 8 evergreen trees shall be planted for each disturbed acre and 25% of required trees planted within 30 feet of perimeter.)
RLK-Kuusisto Project No. 2003-306-M

Dear Mr. Svenby:

On behalf of the property owners and Mr. Frank Kottschade, this letter is being sent within the 10 working days required to request that the City Council hear the above stated Variance and overturn the City's Planning and Zoning Commissioners' denial.

On September 10th the Planning and Zoning Commission of the City of Rochester denied the Variance 62.1107 2) e) 1 and 2 for a reduction in the required landscape plantings. On September 29th, RLK-Kuusisto received the official Findings of Fact which states that an appeal of the denial must be requested within 10 working days.

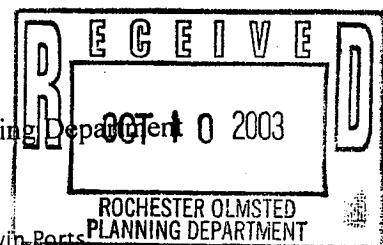
The property owner requests the appeal of Variance 62.1107 2) e) 1 and 2 be scheduled for the next available City Council meeting. It is RLK-Kuusisto's intent to formally define the landscape requirements on the property being considered in the Willow Creek GDP #214 and CUP #03-46.

Thank you for your attention to this matter. Please do not hesitate to contact Frank Kottschade, Michele Caron or myself if you have any questions regarding this appeal. We look forward to the landscape Variance discussion at the next available City Council meeting.

Sincerely,
RLK-Kuusisto, Ltd.

John Dietrich, ASLA
Principal Landscape Architect

Cc: Frank Kottschade Via fax: 507-288-0658
Michele Caron, RLK-Kuusisto, Ltd.
Jennifer Garness, Rochester – Olmsted Consolidated Planning Department
Via fax: 507-287-2275



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Mr. Jim Baier, of 2620 Brookwood Court SE, Eyota MN 55934, addressed the Commission. He stated that he owns the property to the southeast. He indicated that he is also on the Marion Township Board. He expressed concern with the request creating spot zoning. He also expressed concern of possible problems when trying to expand his business.

With no one else wishing to be heard, Ms. Wiesner closed the public hearing.

Ms. Petersson moved to recommend approval of Zoning District Amendment #03-15 by Melinda T. Dively-White & John White with the staff-recommended findings. Mr. Haeussinger seconded the motion. The motion carried 8-0.

* Type III, Phase II Conditional Use Permit request #03-46 and Variances #03-19 by Franklin Kottschade. The applicant is requesting approval for an excavation permit of a substantial land alteration and quarry operation on property located south of 40th Street SW and west of TH 63. The applicant is requesting to fill and construct within the shoreland district for a roadway as well as for the placement of fill in the flood prone district. In addition to the conditional use, the applicant is also requesting a number of variances to the performance standards for quarries. The requested variances range from setback requirements to landscaping and fencing. The property is located south of 40th Street SW and west of TH 63.

Mr. Brent Svenby presented the staff report, dated September 5, 2003, to the Commission. The staff report is on file at the Rochester-Olmsted Planning Department.

Mr. Staver asked if the fence would be around the entire site or around where the blasting would occur.

Mr. Svenby responded around the entire site.

Ms. Wiesner asked if the trees would be up while the process is occurring.

Mr. Svenby responded that the plantings were required as part of the reclamation standards, which are required after the site is mined.

Mr. Burke asked where the plantings had to be.

Mr. Svenby responded 25 percent of them would need to be within 30 feet of the perimeter. The remaining 75 percent could be anywhere on the site (ex. along roadways).

Ms. Wiesner asked if there would be a required buffer the along M-1.

Mr. Svenby responded explained that bufferyards are based on the type of uses that are developed on the site. It is likely that, once uses are established, bufferyards would be required.

Mr. Burke questioned if the fence should be around the mining operation instead of around the entire site.

Mr. Svenby responded that the Ordinance states around the perimeter of the mining site.

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Mr. Haeussinger stated that they move all around.

The applicant's representative, Mr. John Dietrich, of RLK Kuusisto, addressed the Commission. The Project Manager (Michele Caron) was also present to answer any questions. They are in agreement with the staff report and recommendations, except for the following three (3) items.

- 1) ***The need for a 6 foot security fence around the entire property:*** The entire site encompasses 69 acres. They only plan to blast in the southeast corner of the site. Therefore, putting up fencing along the entire perimeter of the site seems unnecessary. Also, the applicant owns the property surrounding the site. Since Willow Creek runs through the property there seems to already be a physical barrier for a portion of the site. Also, the West 80 property will already have their property fenced.
- 2) ***The placement of landscape materials (16 trees per acre):*** The 69 acres is primarily farmland. There are some overstory trees already located in the southwest corner of the property. The site and impact of the trees (approx. 1,100 trees) would severely impact the long-term development of the site. He asked that the landscaping be tied to the ultimate development of the site instead of requiring them to put the trees in right away and may need to tear them back up when they develop the site.
- 3) ***Staff-recommended condition number 7 requiring a 30-foot wide public utility easement along the easterly line of the property:*** The developer has no problem granting the easement to the City for utility relocation. However, they do not think the conditional use permit is the process to grant the easement. This should occur through the platting process or through a development agreement. The developer submitted the conditional use permit to identify all the issues and costs related to the MnDOT take along Highway 52 and 40th Street SW to try to minimize the cost to the taxpayer. The developer is willing to expedite the development agreement with the City.

Mr. Dietrich stated that the variances are based on hardships placed on the site (access at 40th Street SW and grades). MnDOT will be acquiring some of the property at some future point in time.

Ms. Wiesner stated that trees needed to be put in for each disturbed acre. She asked if all 69 acres would be disturbed.

Mr. Dietrich responded yes.

Ms. Wiesner stated that, if they do not disturb the entire 69 acres, they wouldn't have to put in as many trees.

Mr. Dietrich stated that they are using the entire 69 acres at this time.

Mr. Dietrich stated that the mining operation would be in the southwest corner. He explained where they would cut and where they would fill. Soil borings have not been done at this time.

Mr. Dietrich stated that they are also moving over 100,000 cubic yards.

Discussion ensued regarding ornamental trees and other trees being used.

Ms. Petersson asked how many years it would take and why. She expressed concern with the rock crusher and noise.

Ms. Caron responded that they are not sure if the 40th Street SW improvements would occur next year. This is a concept phasing plan at this time. The blasting and crushing would occur within the first couple of years.

Mr. Haeussinger asked if the water-like basins on the property being mined was part of their project.

Ms. Caron stated that it is part of the MnDot project.

With no one else wishing to be heard, Ms. Wiesner closed the public hearing.

Mr. Staver stated that it doesn't seem to make sense to put a lot of trees (approx. 1,100) on a site that doesn't have a lot now. Then, in the future, a final plan would be submitted for the area that would layout the area. They could be replacing them at that time. Putting a fence around the entire 69 acres seems excessive.

Ms. Wiesner suggested that they do not put the trees up until the site development process.

Mr. Haeussinger stated that, if development doesn't occur within 5 years, they should be obligated to put the trees in. The perimeter around the creek on the north and to the west and the area that abuts the West 80 Development, the natural buffer barrier could be utilized as a fence.

Mr. Staver asked if there is a way to support the variance requests but to provide protection.

Mr. Svenby responded that, based on the final site development, if there are all retail uses, there would be no bufferyard requirements. If there is a retail use next to an office building, there would be some. Types of bufferyards are based on the uses that are established on the property. Therefore, they will not know if bufferyards would be required until the uses are known. The tree plantings are part of the reclamation plan and could be counted as meeting bufferyards.

Ms. Wiesner stated that they are still obligated for the 16 trees per acre, but they just do not have to put them in until they submit a site development plan. The Commission could make this a condition upon approval of the conditional use permit.

Mr. Burke stated that any type of landscaping could count towards the 16 trees per acre.

Mr. Svenby responded it would have to be consistent with the type of trees required in the Ordinance.

Ms. Rivas suggested the following wording with regard to providing trees at a later time: "The tree plantings are delayed until such time that a development plan has been submitted and approved. In absent of a development plan after five years, all rules applied to planting shall be in full applicable force."

Mr. Haeussinger stated that, in areas of natural topography (ex. creek and present trees), they could be utilized in meeting the fencing requirements. In the areas that are parallel to adjacent

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developments (ex. West 80 Development) where fencing is already in place, this would meet the fencing requirements.

Mr. Burke explained the problems with designating natural geographic barriers.

Ms. Wiesner stated that they must blend certain topography in with public improvement projects that they do not have any say in. To put a fence between the two of them doesn't make sense.

Mr. Staver asked how staff wanted the Commission to make their motions.

Mr. Svenby asked that those variances the Commission wants to approve should be blocked into one motion and those they wish to deny should be blocked in separate motions. Also, a motion should be made with regard to the conditional use permit separately. He explained that the Commission would need to change any of the staff-recommended findings if necessary.

Mr. Staver moved to approve Variance to Section 62.1107, 1) j (500' setback to adj. Property zoned residential and 50' for industrial zoned property for excavation area with an elevation change of greater than 10 feet), Section 62.1007,1) j (1000' setback to adj. Property zoned residential and 400' for industrial zoned property for any blasting), 62.1107,1) j (1000' setback to adj. Property zoned residential and 100' for industrial zoned property for any crushing or processing), and Section 62.1106 4) b) 1 (A minimum bufferyard of 50 feet shall be maintained adjacent to all property and right-of-ways) with the staff-recommended findings. Mr. Burke seconded the motion. The motion carried 8-0.

FINDINGS – Section 62.1107,1(j):

EXCEPTIONAL CIRCUMSTANCES: There are no residential dwellings as land uses that directly abut this property to the northwest. The property to the northwest is mostly in the floodway or floodplain so limited residential development could occur within this area. The property to the south is zoned M-1 and recently a Conditional Use Permit was approved on the property to allow excavation activities. Coordination between the two properties is necessary to achieve grades that are compatible.

REASONABLE USE: Most of the property to the northwest is in the Floodplain. Use of the property is very limited due to the Floodplain designation of the property. Property to the south will have excavation activities on it, which will remove hill on it. Though Variances may not be required to permit the reasonable use of the property involved, granting of the Variances would provide reasonable use of the site for extraction of the granular material resource.

ABSENCE OF DETRIMENT: The granting of this variance request does not appear to be materially detrimental to the public welfare or to other property in the area. The residential zoned property to the northwest has limited development potential and the commercial/industrial zoned land to the south will have excavation activities, which will remove hill on it. The mining operations would be operating concurrently.

MINIMUM VARIANCE: The minimum variances that would be necessary to alleviate the alleged hardship would be a variance to Section 62.1107 1) J of the City of

Rochester Zoning Ordinance and Land Development Manual, the required minimum setback for an excavation area with an elevation change of greater than 10 feet to residentially and commercial/industrial zoned property, the minimum setback for blasting to residentially and commercial/industrial zoned property for any blasting and the minimum setback for blasting to residentially and commercial/industrial zoned property for crushing and processing.

FINDINGS – Section 62.1106,4) b) 1:

EXCEPTIONAL CIRCUMSTANCES: There may be exceptional circumstances or conditions that apply to the applicant's property that may not apply generally to other properties in the same zoning district due to location. Future improvements to the adjacent roadways and approval of a mining operation to the property to the south make it reasonable to grade the property to be consistent with future grades of adjacent roadways and properties.

REASONABLE USE: The granting of this variance request may be necessary to allow for the reasonable use of the applicant's property due to the planned future roadway improvements planned for TH 63 and 40th Street and approval of the Conditional Use Permit for a operation on the property to the south.

ABSENCE OF DETRIMENT: The granting of this does not appear to be detrimental to the public welfare. By being allowed to grade to the property boundaries, the applicant will be able to match into the future grades of the planned roadway improvement planned for TH 63 and 40th Street. Also by allowing to grade within the required buffer area, the grading on the southerly portion of the site can be coordinated with the property to the south as far as excavating the hill. The applicant does own the property to the west so grading to the west property boundary should not be detrimental.

MINIMUM VARIANCE: The minimum variances that would be necessary to alleviate the alleged hardship would be a variance to Section 62.1106 4) b) 1 of the City of Rochester Zoning Ordinance and Land Development Manual, a minimum bufferyard of 50 feet shall be maintained adjacent to all property boundaries and all existing rights of way and any proposed rights of way for roadways included in the Long Range Transportation Plan or for which an official map has been prepared.

Mr. Staver stated that some fencing needs to be done to promote public safety. He asked the Commission how they wanted to word it.

Mr. Burke questioned if the entire 69 acres would be considered a mining operation. He asked if they could just put security fencing around the immediate area being mined.

Mr. Svenby stated that the mining permit encompasses the entire 69 acres. However, there is a site labeled as the "limits of possible blasting and crushing area".

Ms. Rivas agreed.

Ms. Wiesner stated that they would need to submit a Blasting Plan to the City. Therefore, the areas shown on that map should also be fenced.

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Mr. Staver moved to approve the Variance to Section 62.1107 1 (i) (A 6' continuous security fence provided around the entire perimeter) with the following modification "a six foot continuous security fence provided around the area designated as "limits of possible blasting and crushing area" or as identified on the Blasting Plan. Mr. Haeussinger seconded the motion.

Discussion ensued regarding the motion and changing the variance request submitted by the applicant. Further discussion of having to deny the Variance Request as they would be changing the request.

The motion failed 0-8, with Ms. Petersson, Ms. Rivas, Ms. Wiesner, Mr. Burke, Mr. Haeussinger, Mr. Staver, Mr. Ohly, and Mr. Dockter voting nay.

Mr. Staver moved to deny Variance 62.1107 1) i (A 6' continuous security fence provided around the entire perimeter) based on the staff-recommended findings. Ms. Rivas seconded the motion. The motion carried 8-0.

FINDINGS – Section 62.1107 1) i:

EXCEPTIONAL CIRCUMSTANCES: There are no exceptional circumstances or conditions that apply to the applicant's property that may not apply generally to other properties in the same zoning district. The property to the south is zoned M-1 and recently a Conditional Use Permit was approved on the property to allow the excavation of the hill. As part of the approval of the Conditional Use Permit on the property to the south, a 6' high security fence is being installed.

REASONABLE USE: The granting of this variance request is not necessary to allow for the reasonable use of the applicant's property. The property could still operate the mining operation if the 6' continuous security fence is installed. The 6' security fence provides safety to the general public and would deter people from entering onto the site.

ABSENCE OF DETRIMENT: The granting of this variance request does appear to be materially detrimental to the public welfare or to other property in the area. The purpose of requiring a 6' high continuous security fence around the mining operation is the protect the public and by having the fence will deter the general public from entering the site.

Mr. Staver moved to deny Variance 62.1107 2) e) 1 & 2 (At least 8 deciduous & 8 evergreen trees shall be planted for each disturbed acre and 25% of required trees planted within 30 feet of perimeter) based on the staff-recommended findings. Mr. Burke seconded the motion. The motion carried 8-0.

FINDINGS – Section 62.1107 2) e) 1 & 2:

EXCEPTIONAL CIRCUMSTANCES: There are no exceptional circumstances or conditions that apply to the applicant's property that may not apply generally to other properties in the same zoning district. The planting requirement allows enough flexibility to proceed with the grading and the plantings are not required until the area

is being reclaimed. The plantings that are required may also be counted towards meeting future bufferyard requirements when uses are established on the site. The property to the south is zoned M-1 and recently a Conditional Use Permit was approved on the property to allow the mining of the hill. As part of the approval of the Conditional Use Permit on the property to the south, the required plantings will be planted on that site.

REASONABLE USE: The granting of this variance request is not necessary to allow for the reasonable use of the applicant's property. The property could still operate the mining operation if the required plantings are planted. The planting requirement allows enough flexibility to proceed with the grading and the plantings are not required until the area is being reclaimed. The required plantings are part of a reclamation plan to provide revegetation of the site after the mining is complete. In addition to providing revegetation of the site, the plantings could also be counted towards meeting future bufferyard requirements when uses are established on the site.

ABSENCE OF DETRIMENT: The granting of this variance request does appear to be materially detrimental to the public welfare or to other property in the area. The purpose of requiring plantings on the site after the mining is complete is to have revegetation of the site since the appearance of the property has changed as a result of the mining operation.

Discussion ensued regarding putting two additional conditions upon approval of the conditional use permit with regard to the security fence and tree plantings.

Ms. Rivas suggested adding language shown in **bold on page 10 (condition 6)**.

Ms. Petersson suggested leaving staff-recommended condition number 7.

Mr. Burke asked Mr. Svenby if it is uncommon to see a utility easement at this point in the process.

Mr. Svenby explained that MnDOT informed the City that they needed the sanitary sewer line out of the right-of-way for the Highway 63 project. Part of the condition of approval for the West 80 Development conditional use permit was that they relocate the sanitary sewer line onto the property as part of their mining operation.

Mr. Staver moved to recommend approval of Type III, Phase II Conditional Use Permit request #03-46 (substantial land alteration and quarry operation, fill and grading within the shoreland district and the placement of fill in the floodway and flood prone district) by Franklin Kottschade with the staff-recommended findings and conditions, except to add "and landscape plan reflecting quantities required in Section 62.1107, 2) e)1 & 2" to the end of condition number 6 and adding condition number 9 and 10 as stated below. Mr. Haeussinger seconded the motion. The motion carried 8-0.

CONDITIONS:

1. Prior to excavation, the applicant shall:
 - Provide the City with a financial security consistent with Section 62.1107, 1, h of the Rochester Zoning Ordinance and Land Development Manual;

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- Receive approval of a grading, drainage and erosion control plans, meeting City standards;
 - The applicant shall submit a Blasting Plan to the City, in compliance with Section 62.1107, 1), m), prior to any blasting occurring on the site;
2. The reclamation/restoration grades shall match the proposed reconstructed grade elevations of TH 63 and ramp, and the 40th ST. SW profile and cross-sections as specified on the TH 63 Layout Plan.
 3. A TIR shall be completed, if it differs from the land use and trip generation assumptions used in the TH 63 Traffic Study, to evaluate the impacts on the surrounding roadway, specifically TH 63 and 40th Street.
 4. Stormwater Management must be provided on-site via City approved on-site stormwater detention facilities. Adequate vehicular access shall be provided to any proposed stormwater detention ponds.
 5. The Owner shall match the abutting property line grades unless other documented arrangements are made with the abutting landowner and noted on the grading plan approved by the City.
 6. Prior to Final Plat submittal, and/or development of this Property, the applicant shall enter into a Development Agreement with the City that outlines the obligations of the applicant relating to, but not limited to, floodway limitations of development, stormwater management, transportation improvements including Transportation Improvement District Charges, access control, pedestrian facilities, right-of-way dedication, access and extension of utilities for adjacent properties, contributions for public infrastructure, **and landscape plan reflecting quantities required in Section 62.1107, 2) e)1 & 2.**
 7. The owners shall dedicate a 30-foot wide public utility easement and an additional 50-foot wide temporary construction easement along the easterly line of the property, concurrent with the approval of the CUP, to accommodate the trunkline sanitary sewer relocation. The owner shall address, prior to any grading activity occurring on the property, the extra depth that will result based on the plan to place fill in the easement area. The applicant and City staff will need to agree upon and coordinate a schedule for the sewer relocation prior to final CUP approval. A revised plan shall be submitted showing the location of the trunkline sanitary sewer as well as the necessary easements.
 8. The Owner shall coordinate with the RPU Water Division on the alignment of the 16" water main relocation to within the boundaries of the property. The owner shall also dedicate any necessary public utility easements for the water main. A revised plan shall be submitted showing the location of the trunkline sanitary sewer as well as the necessary easements.
 9. **The 6-foot high security fencing should encompass the area designates as the blasting, crushing, and immediate excavation area as noted on the plans submitted to the Commission and/or any Blasting Plan submitted to the Planning Department.**
 10. **The plantings should occur at such time that final development plans are submitted or within five (5) years of the permit issuance. Plantings shall be consistent with Section 62.1107, 2) e)1 & 2.**

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Variance Request
Removal of Landscape Requirement
Willow Creek Commons - Rochester, MN

Prepared By:
RLK-Kuusisto, Ltd.
August 12, 2003

For
Type III Phase I
Variance Application

Section 62.1107, Items 2e1 and 2e2; Section 62.1109, Items 2g1 and 2g2
(Standards for Quarries and Substantial Land Alteration: Reclamation Standards, Revegetation,
Landscape Materials)

Variance Request:

Variance to Item 2e1 and 2e2 (Reclamation Standards, Revegetation, Landscape Materials) of Section 62.1107 (Standards for Quarries) and Items 2g1 and 2g2 (Reclamation Standards, Revegetation, Landscape Materials) of Section 62.1109 (Standards for Substantial Land Use Alteration) to omit the required placement of 1,104 specified landscape materials for the Willow Creek Commons revegetation plan.

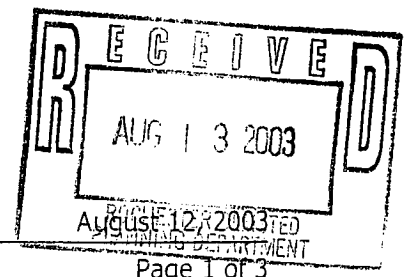
Variance Standard:

The aforementioned Zoning Ordinance sections are identical; the following is excerpted from the Zoning Ordinance text:

- e. *Revegetation. In addition to required seeding, the reclaimed site shall be landscape. The applicant shall have the flexibility to arrange plant material to best suit the ultimate proposed use and design of the property, provided that:*
1. *At least 8 deciduous and 8 evergreen trees from the City's approved plant list, and consistent with the requirements of Section 63.150, are planted for each disturbed acre; and*
 2. *At least 25 percent of required trees are planted within 30 feet of the perimeter of the site.*

Background

The 69-acres as shown on the Substantial Land Alteration plan is a direct result of the change in access to this tract. Over ten years ago, the applicant requested an opportunity to develop the commercial/industrial zoned tract with a permitted land use with direct access from Trunk Highway 63 (TH 63). The applicant's project has been delayed by a series of governmental agencies to accommodate an access plan approved by MnDOT that was finally defined in 2003.



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The access to this 69-acre parcel is now proposed to come from a frontage road running parallel to TH 63. The frontage road will access both 40th Street and 48th Street. The 40th Street access will require the frontage road connections to be eight to ten feet higher than the original TH 63 access. In addition, MnDOT is proposing improvements to 40th Street and will be installing the dike, overpass and hydrological improvements to Willow Creek. The access and grades of MnDOT's improvements require the applicant to expand the earthwork quantities to a point that requires a substantial land alteration permit for the entire 69 acres.

Hardship Justification

The subject property is approximately 69 acres in size; the requirement for eight deciduous trees and eight coniferous trees per acre would require 1,104 trees to be placed on a site slated for future development. The proposed landscape quantities would be imposed on a site that is essentially in an interim use.

Today the site is an agricultural field with very few trees; it will be rough graded to match the elevations shown on the grading plan. The applicant is in the process of requesting approval of the General Development Plan (GDP) and Substantial Land Alteration plan. All plans do not impact or change the existing Willow Creek floodway or tree canopy. The site is clearly separated from the residential property north of 40th Street as shown on the site plan. The applicant for the Willow Creek Commons project is also the property owner of the tract to the west and north of the project site; this includes Willow Creek and the existing tree canopy.

Landscape requirements for this site should be addressed during the site development application process. Placement of landscape materials along the edges of the site will not add to the existing buffer and tree canopy of Willow Creek. Willow Creek and its 150-foot wide tree canopy visibly separate 40th Street and 11th Avenue from the subject 69-acres. The separation of this site from an occupied or developed land use should also exempt its need to buffer the project boundaries for an interim land use.

Numerous extraordinary conditions exist on the Willow Creek Commons parcel, including:

- The separation from existing residential structures north of 40th Street and the complete protection of the Willow Creek landscape canopy on the west and north sides of the property and north of the 69-acre site. The west property line is an internal property line and does not abut any public road or residential property. The west line of the GDP is over 2,000 feet from 11th Avenue. The northwest leg of the property will eventually match the MnDOT built dike and is also an internal property line. Willow Creek will not be impacted. The existing trees along Willow Creek will remain and will fully screen and visually conceal the proposed grading operations from the residential properties north of 40th Street.
- Future right-of-way dedication along the east boundary and coordination of landscape materials and placement should be reviewed with the ultimate land use and frontage road design and meet the requirements of the landscape ordinance.
- Visually, the site will require a connection to TH 63, clustering of plant material along TH 63 will inhibit sight lines to the future land use.
- Elimination of the landscape requirement will not be injurious or detrimental to the neighborhood due to the buffer existing west and north of the GPD site and lack of trees on the existing site.
- A visual buffer to the undeveloped property to the west is not necessary. Clustering trees along the west project boundary will hinder development design of that parcel and grading coordination that is required to provide access.
- The variance is necessary to permit a reasonable use of the property, especially for the future commercial/industrial nature.

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- This is the minimum variance necessary to provide a reasonable economic use of the property.
 - The plan does not remove significant trees, as the site is presently a farm field.
 - Ordinance requirements would essentially place one tree for every 2,700 square feet or one tree 50-feet on center throughout the site, a significant burden not matched in any other commercial/industrial center.
 - The requirement for landscape quantities, placement and the edge treatment should be coordinated with the future development plan of the site. The City of Rochester will then have the opportunity to review the landscape plan with the defined future land use.

Project Team

Developer

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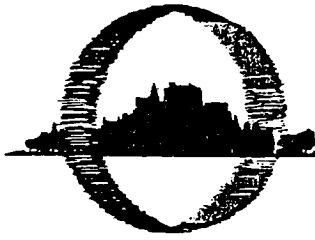
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ROCHESTER-OLMSTED PLANNING DEPARTMENT

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COUNTY OF

Olmsted

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TO: City Planning & Zoning Commission

FROM: Brent Svenby, Planner

DATE: September 5, 2003

RE: Type III, Phase II Conditional Use Permit request #03-46 and Variances #03-19 by Franklin Kottschade. The applicant is requesting approval for an excavation permit of a substantial land alteration and quarry operation on property located south of 40th Street SW and west of TH 63. The applicant is requesting to fill and construct within the shoreland district for a roadway as well as for the placement of fill in the flood prone district. In addition to the conditional use, the applicant is also requesting a number of variances to the performance standards for quarries. The requested variances range from setback requirements to landscaping and fencing. The property is located south of 40th Street SW and west of TH 63

Planning Department Review:

Applicant: Frank Kottschade
3800 Highway 52 South
Rochester, MN 55901

Engineer/Consultant: RLK_Kuusisto, Ltd.
Attn: Michele Jackson Caron
6110 Blue Circle Drive, Suite 100
Minnetonka, MN 55343

Requested Action: The applicant is requesting a Type III, Phase II Conditional Use Permit to permit a Quarry in the M-1 (Mixed Commercial-Industrial) District. The applicant is also requesting a CUP for fill in the floodway and flood prone area. Also, the applicant is requesting a CUP for grading within the shoreland district. The applicant has also requested a number of variances to the standards for the operation of a quarry.

Location of Property: The property is located south of 40th Street SW, west of TH 63 and east of Willow Creek.

Zoning: M-1 (Mixed Commercial-Industrial).

Referral Comments:

1. Rochester Public Works
2. MN DOT
3. RPU Water Division



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Standards for Approval:

Excavation activities in the M-1 (Mixed Commercial) district require a Type III, Phase II Conditional Use Permit and are regulated by Section 62.1100 *et seq.* of the Rochester Zoning Ordinance and Land Development Manual. Conditional Uses for Excavation are also subject meeting the standards of 61.146 and some additional standards specific to Excavation found in Section 62.1105. Operation/performance standards for quarries are found in Section 62.1107.

Grading within the shoreland district is regulated by Section 62.1006 – 62.1010 and the placement of fill within the floodway and flood prone district is regulated by Section 62.800 of the Rochester Zoning Ordinance and Land Development Manual.

Report Attachments:

1. Excerpts from the Rochester Zoning Ordinance and Land Development Manual
2. Application Map/Plan
3. Referral Comments
4. Narrative for the Quarry Activity
5. Narrative for Fill in the Floodway and Flood Prone
6. Narrative for Shoreland Impact
7. Letter from the Polaris Group
8. Narrative for Variances

SUMMARY OF PROPOSAL:

The applicant is requesting an Excavation permit to operate a Quarry on property located south of 40th St. SW, west of TH 63 and east of Willow Creek. A crusher will be utilized on the site. Interchanges are planned to be constructed at TH 63 and 40th Street and at 48th Street south. The Official Street Map (#12) identifying the needed right-of-way for the interchange and also identifies a future north/south collector road west of TH 63 through the applicant's property.

The amount of excavation proposed is primarily a cut and balance of materials on the property. Some the fill material will come from the West 80 Development, which is located to the south.

The grading of the site will occur over several years however the majority of the grading will be completed within 2 years. Over 600,000 cubic yards of material will be moved as a result of the proposed grading of the site. Excavation would result in changing grades by as much as 30 vertical feet. Cutting as much as 30 feet occurs in the southerly portion of the site while filling 12 to 14 feet occurs in the northerly portion of the site. Hours of operation would be from 7:00 AM to 10:00 PM Monday-Friday and on Saturday as needed. Please see the attached narrative report for more details.

The grading is shown as being done in three (3) phases. The extent of the work being done in the phases are described in detail in the narrative submitted with the application. Filling within the floodway will be limited to what is required for the frontage road grading without impacting the floodway water elevations. Most of activity occurring within the floodway will be phased to occur after the 40th St. SW improvements are complete. Excess material that may be available from phase III cut area may be utilized on the parcel to the west in the future or trucked off-site to other locations.

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The applicant is also requesting approval of the placement of fill in the flood prone district and floodway. According to the information submitted by the applicant the fill being placed in the floodway and flood prone district will be limited to what is required for the frontage road grading and will not exceed the allowable elevation as determined in the CLOMR analysis. The frontage road within the floodway will be temporary and will not impact the existing floodway water elevations. The remaining floodway area will not be filled until the 40th Street SW improvements are completed. The area proposed for the filling within the floodway and flood prone district will be removed from the floodway and flood prone district after the completion of the 40th Street improvements and the approval of the LOMR by FEMA.

The applicant is also requesting approval for grading within the shoreland. The proposal is to clear the area within the shoreland and place fill to remove the site from the flood prone district. The plan is to construct only the temporary roadway. Once the improvements are completed for 40th St. SW and the area is removed from the floodway and flood prone district additional grading will take place.

The applicant submitted a letter from the Polaris Group regarding the filling proposed within the floodway, flood prone and shoreland areas. The temporary roadway will be constructed to an elevation of approximately 1050' and it would be raised when the 40th St. interchange is completed. The proposed elevation of 1050' would not unduly obstruct flood flow prior to the construction of the MnDOT dike and the 40th St. bridge according to the letter from the Polaris Group. Once the LMOR is approved by FEMA, the area will be out of the floodway and flood prone districts.

Variances:

LDM Section# - Reference:	Ordinance Requirement:	Applicant Request/Proposal:	Notes:
62.1107, 1) j	500' setback to adj. Property zoned residential and 50' for industrial zoned property for excavation area with an elevation change of greater than 10 feet	Won't meet this setback to the northwest and south.	A CUP was approved for the property to south to allow excavation activities. The proposed grading on the two properties will need to be coordinated. The property to the northwest is owned by the applicant and is located in the flood plain and has very limited development potential.
62.1107,1) j	1000' setback to adj. Property zoned residential and 400' for industrial zoned property for any blasting	Won't meet this setback to the west and south.	A CUP was approved for the property to south to allow excavation activities. The proposed grading on the two properties will need to be coordinated. The property to the west is owned by the applicant and is zoned for commercial/industrial uses.
62.1107,1) j	1000' setback to adj. Property zoned residential and 100' for industrial zoned	Won't meet this setback to the west and south.	A CUP was approved for the property to south to allow excavation activities. The proposed

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	property for any crushing or processing		grading on the two properties will need to be coordinated. The property to the west is owned by the applicant and is zoned for commercial/industrial uses.
62.1107, 1) i	A 6' continuous security fence provided around the entire perimeter	Proposes no fencing at all.	A CUP was approved for the property to south to allow excavation activities. The property owner to the south was required to provide a 6' security fence around the entire perimeter of his property.
62.1107, 2) e) 1 & 2	At least 8 deciduous & 8 evergreen trees shall be planted for each disturbed acre and 25% of required trees planted within 30 feet of perimeter	Proposes no landscaping now, says landscaping will be provided when the site is developed with uses.	A CUP was approved for the property to south to allow excavation activities. The property owner to the south was required to provide the landscaping a required by this standard. Depending to the uses developed on the site, landscaping (bufferyards) may not be required.
62.1106 4) b) 1	A minimum bufferyard of 50 feet shall be maintained adjacent to all property and right-of-ways	Grading required to all property boundaries to match grades of the TH 63/40 th St. project and to allow the development of the property to the west.	Grading to the property boundaries is needed to match the future grades because of the TH 63/40 th St. project.

Variance requests are subject to findings identified in Section 60.417.

The Planning staff suggested findings to Section 60.417 are:

For 62.1107, 1) j (first 3 listed in the above table)

EXCEPTIONAL CIRCUMSTANCES: *There are no residential dwellings as land uses that directly abut this property to the northwest. The property to the northwest is mostly in the floodway or floodplain so limited residential development could occur within this area. The property to the south is zoned M-1 and recently a Conditional Use Permit was approved on the property to allow excavation activities. Coordination between the two properties is necessary to achieve grades that are compatible.*

REASONABLE USE: *Most of the property to the northwest is in the Floodplain. Use of the property is very limited due to the Floodplain designation of the property. Property to the south will have excavation activities on it, which will remove hill on it. Though Variances may not be required to permit the reasonable use of the property involved, granting of the Variances would provide reasonable use of the site for extraction of the granular material resource.*

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ABSENCE OF DETRIMENT: The granting of this variance request does not appear to be materially detrimental to the public welfare or to other property in the area. The residential zoned property to the northwest has limited development potential and the commercial/industrial zoned land to the south will have excavation activities, which will remove hill on it. The mining operations would be operating concurrently.

MINIMUM VARIANCE: The minimum variances that would be necessary to alleviate the alleged hardship would be a variance to Section 62.1107 1) J of the City of Rochester Zoning Ordinance and Land Development Manual, the required minimum setback for an excavation area with an elevation change of greater than 10 feet to residentially and commercial/industrial zoned property, the minimum setback for blasting to residentially and commercial/industrial zoned property for any blasting and the minimum setback for blasting to residentially and commercial/industrial zoned property for crushing and processing. This finding would not pertain in the case of denial.

For 62.1107, 1) I A 6' continuous security fence provided around the entire perimeter

EXCEPTIONAL CIRCUMSTANCES: There are no exceptional circumstances or conditions that apply to the applicant's property that may not apply generally to other properties in the same zoning district. The property to the south is zoned M-1 and recently a Conditional Use Permit was approved on the property to allow the excavation of the hill. As part of the approval of the Conditional Use Permit on the property to the south, a 6' high security fence is being installed.

REASONABLE USE: The granting of this variance request is not necessary to allow for the reasonable use of the applicant's property. The property could still operate the mining operation if the 6' continuous security fence is installed. The 6' security fence provides safety to the general public and would deter people from entering onto the site.

ABSENCE OF DETRIMENT: The granting of this variance request does appear to be materially detrimental to the public welfare or to other property in the area. The purpose of requiring a 6' high continuous security fence around the mining operation is the protect the public and by having the fence will deter the general public from entering the site.

MINIMUM VARIANCE: The minimum variances that would be necessary to alleviate the alleged hardship would be a variance to Section 62.1107 1) I of the City of Rochester Zoning Ordinance and Land Development Manual, a 6' continuous security fence provided around the entire perimeter. This finding would not pertain in the case of denial.

For 62.1107, 2) e) 1 & 2 At least 8 deciduous & 8 evergreen trees shall be planted for each disturbed acre and 25% of required trees planted within 30 feet of perimeter

EXCEPTIONAL CIRCUMSTANCES: There are no exceptional circumstances or conditions that apply to the applicant's property that may not apply generally to other properties in the same zoning district. The planting requirement allows enough flexibility to proceed with the grading and the plantings are not required until the area is being reclaimed. The plantings that are required may also be counted towards meeting future bufferyard requirements when uses are established on the site. The property to the south is zoned M-1 and recently a Conditional Use Permit was approved on the property to allow the mining of the hill. As part of the approval of the Conditional Use Permit on the property to the south, the required plantings will be planted on that site.

REASONABLE USE: The granting of this variance request is not necessary to allow for the reasonable use of the applicant's property. The property could still operate the mining operation if the required plantings are planted. The planting requirement allows enough flexibility to proceed with the grading and the plantings are not required until the area is being reclaimed. The required

plantings are part of a reclamation plan to provide revegetation of the site after the mining is complete. In addition to providing revegetation of the site, the plantings could also be counted towards meeting future bufferyard requirements when uses are established on the site.

ABSENCE OF DETRIMENT: The granting of this variance request does appear to be materially detrimental to the public welfare or to other property in the area. The purpose of requiring plantings on the site after the mining is complete is to have revegetation of the site since the appearance of the property has changed as a result of the mining operation.

MINIMUM VARIANCE: The minimum variances that would be necessary to alleviate the alleged hardship would be a variance to Section 62.1107 2) e) 1 & 2 of the City of Rochester Zoning Ordinance and Land Development Manual, at least 8 deciduous and 8 evergreen trees from the City's approved plant list, and consistent with the requirements of Section 63.150, are planted for each disturbed acre and at least 25 percent of required trees are planted within 30 feet of the perimeter of the site. This finding would not pertain in the case of denial.

For 62.1106 4) b) 1 A minimum bufferyard of 50 feet shall be maintained adjacent to all property and right-of-ways

EXCEPTIONAL CIRCUMSTANCES: There may be exceptional circumstances or conditions that apply to the applicant's property that may not apply generally to other properties in the same zoning district due to location. Future improvements to the adjacent roadways and approval of a mining operation to the property to the south make it reasonable to grade the property to be consistent with future grades of adjacent roadways and properties.

REASONABLE USE: The granting of this variance request may be necessary to allow for the reasonable use of the applicant's property due to the planned future roadway improvements planned for TH 63 and 40th Street and approval of the Conditional Use Permit for a operation on the property to the south.

ABSENCE OF DETRIMENT: The granting of this does not appear to be detrimental to the public welfare. By being allowed to grade to the property boundaries, the applicant will be able to match into the future grades of the planned roadway improvement planned for TH 63 and 40th Street. Also by allowing to grade within the required buffer area, the grading on the southerly portion of the site can be coordinated with the property to the south as far as excavating the hill. The applicant does own the property to the west so grading to the west property boundary should not be detrimental.

MINIMUM VARIANCE: The minimum variances that would be necessary to alleviate the alleged hardship would be a variance to Section 62.1106 4) b) 1 of the City of Rochester Zoning Ordinance and Land Development Manual, a minimum bufferyard of 50 feet shall be maintained adjacent to all property boundaries and all existing rights of way and any proposed rights of way for roadways included in the Long Range Transportation Plan or for which an official map has been prepared. This finding would not pertain in the case of denial.

REVIEW PROCEDURES:

Excavation activities in the M-1 (Mixed Commercial) district require a Type III, Phase II Conditional Use Permit and are regulated by Section 62.1100 *et seq.* of the Rochester Zoning Ordinance and Land Development Manual. Conditional Uses for Excavation are also subject meeting the standards of 61.146 and some additional standards specific to Excavation found in Section 62.1105.

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When deciding on a Conditional Use Permit in any flood district, the standards of Sections 61.146 and 62.824 shall be considered. These sections are attached to the staff report. In addition to Sections 61.146 and 62.824, Section 62.860 needs to be complied with.

Section 62.860 of the LDM states that "the deposition of any fill or spoil from dredging of sand and gravel operations, the construction of any structure, or the grading or paving of any areas shall require certification by a registered engineer or hydrologist that the following conditions have been met:

1. Fill deposited in the flood prone area shall be no more than the minimum amount necessary to conduct the use.
2. No net loss of capacity for surface storage of flood waters shall result from the activity.
3. The effect of such activities in the flood prone area shall not result in an increase in erosion potential on the site.

When deciding on a conditional use permit within the shoreland district, the following factors (62.1010), in addition to the standards in Paragraph 61.146 shall also be considered:

- a) A thorough evaluation of the waterbody and topographic, vegetation, and soils conditions on the site must be made to ensure:
 - 1) The prevention of soil erosion or other possible pollution of public waters, both during and after construction;
 - 2) The visibility of structures and other facilities as viewed from public waters is limited;
 - 3) The site is adequate for water supply and on-site sewage treatment; and
 - 4) The types, uses, and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercraft.

RECOMMENDATION:

Staff is only recommending that the variances to the setbacks for blasting, crushing, elevation change of greater than 10 feet and the 50 foot bufferyard be granted. Staff does recommend that the other variances requested be denied. *If the commission agrees with staff on the variances, revised plans will need to be submitted showing a 6 foot security fence around the entire property as well as the required plantings for the reclamation of the site. The commission will need to add a condition requiring that.*

If the Commission wishes to proceed with this application, the Commission and Council could make findings in support of the application consistent Rochester Zoning Ordinance and Land Development Manual (see attached) Sections 62.1105, 61.146, 62.824, 62.860 and 62.1010, if the following conditions or modifications are imposed:

1. ***Prior to excavation, the applicant shall:***
 - ***Provide the City with a financial security consistent with Section 62.1107, 1, h of the Rochester Zoning Ordinance and Land Development Manual;***

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- *Receive approval of a grading, drainage and erosion control plans, meeting City standards;*
 - *The applicant shall submit a Blasting Plan to the City, in compliance with Section 62.1107, 1), m), prior to any blasting occurring on the site;*
2. *The reclamation/restoration grades shall match the proposed reconstructed grade elevations of TH 63 and ramp, and the 40th ST. SW profile and cross-sections as specified on the TH 63 Layout Plan.*
 3. *A TIR shall be completed, if it differs from the land use and trip generation assumptions used in the TH 63 Traffic Study, to evaluate the impacts on the surrounding roadway, specifically TH 63 and 40th Street.*
 4. *Stormwater Management must be provided on-site via City approved on-site stormwater detention facilities. Adequate vehicular access shall be provided to any proposed stormwater detention ponds.*
 5. *The Owner shall match the abutting property line grades unless other documented arrangements are made with the abutting landowner and noted on the grading plan approved by the City.*
 6. *Prior to Final Plat submittal, and/or development of this Property, the applicant shall enter into a Development Agreement with the City that outlines the obligations of the applicant relating to, but not limited to, floodway limitations of development, stormwater management, transportation improvements including Transportation Improvement District Charges, access control, pedestrian facilities, right-of-way dedication, access and extension of utilities for adjacent properties, and contributions for public infrastructure.*
 7. *The owners shall dedicate a 30-foot wide public utility easement and an additional 50-foot wide temporary construction easement along the easterly line of the property, concurrent with the approval of the CUP, to accommodate the trunkline sanitary sewer relocation. The owner shall address, prior to any grading activity occurring on the property, the extra depth that will result based on the plan to place fill in the easement area. The applicant and City staff will need to agree upon and coordinate a schedule for the sewer relocation prior to final CUP approval. A revised plan shall be submitted showing the location of the trunkline sanitary sewer as well as the necessary easements.*
 8. *The Owner shall coordinate with the RPU Water Division on the alignment of the 16" water main relocation to within the boundaries of the property. The owner shall also dedicate any necessary public utility easements for the water main. A revised plan shall be submitted showing the location of the trunkline sanitary sewer as well as the necessary easements.*

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EXCERPTS FROM THE ROCHESTER ZONING ORDINANCE AND LAND DEVELOPMENT MANUAL

60.417 **Findings for Variances:** In taking action on a variance request, the approval authority shall make findings supporting the decision based on the following guidelines:

- 1) The approval authority may grant a variance to the provisions of this ordinance if it finds that:
 - a) there are extraordinary conditions or circumstances, such as irregularity, narrowness, or shallowness of the lot or exceptional topographical or physical conditions which are peculiar to the property and do not apply to other lands within the neighborhood or the same class of zoning district; and
 - b) the variance is necessary to permit the reasonable use of the property involved; and
 - c) the variance will not be materially detrimental to the public welfare or materially injurious to other property in the area, is in harmony with the general purpose and intent of this ordinance, and will not adversely affect implementation of the Comprehensive Plan; and
 - d) the variance as granted is the minimum necessary to provide reasonable economic use of the property.

The extraordinary conditions or circumstances shall be found not to be the result of an action by the applicant or property owners who have control of the property.

In addition, the approval authority shall find that development of the parcel in question cannot be integrated with development of adjacent parcels under the same ownership in such a manner so as to provide for the reasonable economic use of the total site in a manner consistent with the provisions of this ordinance.

- 2) The Board may grant a variance to the literal provisions of this ordinance if it finds that:
 - a) there has been substantial and detrimental reliance in good faith by an applicant who has received a permit or certificate issued in error by the administrative official charged with enforcement of this ordinance, and
 - b) the mistaken issuance of the certificate or permit is not the result of an action on the part of the applicant, the property owner, or any other person or party who has had control of the property, to provide misleading or incorrect information, or to knowingly withhold information necessary for the administrative official to accurately review the permit or certificate request.
- 3) The Board shall under no circumstances grant a variance that will allow a use otherwise not permitted within the zoning district or any variance of the elevation or levels for flood protection.
- 4) In granting a variance, the zoning administrator or the Board may impose such reasonable and appropriate conditions and safeguards as may be necessary to accomplish, to the extent possible under the circumstances, the purposes of the regulations or provisions which are to be varied or modified and to reduce or minimize potentially injurious effects of the variance upon adjoining properties, the character of the neighborhood, and the health, safety, or general welfare of the community. A variance and any conditions and safeguards which were made a part of the terms under which the variance was granted are binding upon the applicant and any subsequent purchaser, heir, or assign of the property, and any violation of a variance or its conditions and safeguards shall be a violation of this ordinance and punishable as such.

61.145 **Matters Under Consideration:** The review of a conditional use is necessary to insure that it will not be of detriment to and is designed to be compatible with land uses and the area surrounding its location; and that it is consistent with the objectives and purposes of this ordinance and the comprehensive plan.

61.146 **Standards for Conditional Uses:** The zoning administrator, Commission, or Council shall approve a development permit authorizing a conditional use unless one or more of the following findings with respect to the proposed development is made:

- 1) provisions for vehicular loading, unloading, parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets and ways will create hazards to safety, or will impose a significant burden upon public facilities.
- 2) The intensity, location, operation, or height of proposed buildings and structures will be detrimental to other private development in the neighborhood or will impose undue burdens on the sewers, sanitary and storm drains, water or similar public facilities.
- 3) The provision for on-site bufferyards and landscaping does not provide adequate protection to neighboring properties from detrimental features of the development.
- 4) The site plan fails to provide for the soil erosion and drainage problems that may be created by the development.
- 5) The provisions for exterior lighting create undue hazards to motorists traveling on adjacent public streets or are inadequate for the safety of occupants or users of the site or such provisions damage the value and diminish the usability of adjacent properties.
- 6) The proposed development will create undue fire safety hazards by not providing adequate access to the site, or to the buildings on the site, for emergency vehicles.
- 7) In cases where a Phase I plan has been approved, there is a substantial change in the Phase II site plan from the approved Phase I site plan, such that the revised plans will not meet the standards provided by this paragraph.
- 8) The proposed conditional use does not comply with all the standards applying to permitted uses within the underlying zoning district, or with standards specifically applicable to the type of conditional use under consideration, or with specific ordinance standards dealing with matters such as signs which are part of the proposed development, and a variance to allow such deviation has not been secured by the applicant.

61.1105 FINDINGS NECESSARY FOR ISSUANCE OF CONDITIONAL USE PERMITS (for Excavation Activities):

The City shall approve a conditional use permit authorizing an excavation activity only if all of the following findings with respect to the proposed activity are made, in addition to those listed in Section 61.146:

- 1) The activity will not result in a danger to life or property due to (1) steep or unstable slopes, (2) unsafe access to the property, (3) excessive traffic, or (4) proximity to existing or planned residential areas, parks and roadways;
- 2) Visual, noise, dust, and/or excessive on- or off-site environmental impacts on public parks, roadways and residential areas can be adequately mitigated by the Applicant and a fully detailed plan is submitted by the Applicant to demonstrate the mitigation methods to be used, the cost of such mitigation, the source of funds for such mitigation, and adequate legal assurance that all of such mitigation activities are carried out;
- 3) The use of trucks and heavy equipment will not adversely impact the safety and maintenance of public roads providing access to the site, or such impacts will be mitigated;
- 4) The proposed use will not adversely affect air quality or ground water or surface water quality;
- 5) The proposed use will not adversely affect the scenic quality of Rochester or the natural landscapes, environment, wildlife and wildlife habitat; or if such effects are anticipated to

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occur, the reclamation plan provides for adequate restoration of the site following completion of the excavation activity;

- 6) The activity will be compatible with existing development and development anticipated in the future, including other uses as shown in the Comprehensive Plan, including but not limited to: patterns of land use, recreational uses, existing or planned development, public facilities, open space resources and other natural resources;
- 7) The activity will not unduly affect the use and enjoyment of adjacent properties;
- 8) The site plan provides for adequate buffers and screening year-round from unsightly features of the excavation operation;
- 9) The reclamation plan provides for adequate and appropriate restoration and stabilization of cut and fill areas;
- 10) The excavation activity will not result in negative impacts on drainage patterns or stormwater management facilities;
- 11) The proposed activity will minimize impacts on sinkholes, wetlands and other natural features affecting ground water or surface water quality;
- 12) The intensity and the anticipated duration of the proposed excavation activity is appropriate for the size and location of the activity;
- 13) Permanent and interim erosion and sediment control plans have been approved by the City;
- 14) Surety has been provided that guarantees the site will be fully restored, after completion of the excavation activity, to a safe condition, and one that permits reuse of the site in a manner compatible with the Comprehensive Plan, neighborhood plans, the Land Use Plan and applicable City policies.
- 15) The proposed activity complies with the requirements of the adopted building code.

62.824 **Conditional Use Permits - Standards for Approval:** When deciding on Conditional Use Permits in any of the flood districts, the following factors, in addition to the standards of Paragraph 61.146 shall also be considered:

- 1) The danger to life and property due to increased flood heights or velocities caused by encroachments.
- 2) The danger that materials may be swept onto other lands or downstream to the injury of others.
- 3) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary condition.
- 4) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- 5) The importance of the services provided by the proposed facility to the community.
- 6) The need for a waterfront location for the facility.
- 7) The availability of alternative locations not subject to flooding for the proposed use.
- 8) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

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- 9) The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
- 10) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- 11) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
- 12) Such other factors which are relevant to the purposes of Paragraph 62.800.

62.860 CONSTRUCTION STANDARDS IN THE FLOOD PRONE DISTRICT

The requirements applicable in the Flood Fringe District, as defined in Section 62.840 shall apply in the Flood Prone District and, in addition, the deposition of any fill or spoil from dredging of sand and gravel operations, the construction of any structure, or the grading or paving of any areas shall require certification by a registered professional engineer or hydrologist that the following conditions have been met:

- 1) Fill deposited in the flood prone area shall be no more than the minimum amount necessary to conduct the use.
- 2) No net loss of capacity for surface storage of flood waters shall result from the activity.
- 3) The effect of such activities in the flood prone area shall not result in an increase in erosion potential on the site.

62.1010 CONDITIONAL USE PERMITS - STANDARDS FOR APPROVAL

- 1) When deciding on a conditional use permit within the shoreland district, the following factors, in addition to the standards in Paragraph 61.146 shall also be considered:
 - a) A thorough evaluation of the waterbody and topographic, vegetation, and soils conditions on the site must be made to ensure:
 - 1) The prevention of soil erosion or other possible pollution of public waters, both during and after construction;
 - 2) The visibility of structures and other facilities as viewed from public waters is limited;
 - 3) The site is adequate for water supply and on-site sewage treatment; and
 - 4) The types, uses, and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercraft.

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Revised Project Narrative
Conditional Use Permit for Substantial Land Alteration and Quarry Activities
Willow Creek Commons - Rochester, MN

Prepared By:
RLK-Kuusisto, Ltd.
Revised August 15, 2003

For
Type III Phase II
Conditional Use Permit (CUP) Application for Substantial Land Alteration and Quarry Activities

Purpose

This application for a Conditional Use Permit (CUP) for substantial land alteration and quarry activities has been prepared for the Willow Creek Commons project in accordance with Section 62.1100 of the Rochester Zoning Ordinance. The project site is located at the southwest quadrant of Trunk Highway 63 (TH 63) and 40th Street SW. This application is being submitted in conjunction with CUP applications for construction in the floodway/flood prone districts and a construction in the shoreland district; these applications were submitted previously. Updated plans for these CUP applications are included with this revised application. A General Development Plan (GDP) application was submitted for the project in July 2003; the GDP is scheduled to be heard at the August 27, 2003 Planning Commission meeting. It is anticipated that the CUP applications will be heard before the Planning Commission on September 10, 2003.

The project's proposed fill activities constitute a substantial land alteration as defined by the Zoning Ordinance due to the amount of fill required to bring the site up to a grade consistent with the 40th Street improvements to be constructed by MnDOT. The project is currently designed to meet the grade of 1058± at the proposed 40th Street access; this will require significantly more earthwork/fill than the existing, previously proposed access location onto TH 63 at an elevation of 1050±. Additionally, the site is now designed to coordinate with the proposed dike elevation along the northwest property line, which is also higher than the existing TH 63 access. With the new MnDOT-designed 40th Street/TH 63 interchange, the entire site has been raised an average of 6+ feet to match the MnDOT improvements. Grade changes of 10 feet or more will be required for the majority of the project site to coordinate with MnDOT's plans; this was not the condition when access was originally sought from TH 63. Due to this hardship imposed by MnDOT's improvements associated with 40th Street, variance requests for the following items accompany this application:

1. Removal of a 50-foot wide bufferyard as required by Section 62.1106, Item 4b1. Construction of the public frontage road along the east and connection to 40th Street on the north will require construction within the 50-foot bufferyard. Grading to coordinate with the West 80 Development project excavations on the south property line and future development on the west property line will require grading up to the subject site's property lines. Grading on the northwest to match the proposed MnDOT dike elevations will require grading within 50-feet of the proposed MnDOT acquisition area.
2. Removal of landscape tree requirements specified in the reclamation/revegetation standards in Sections 62.1107, Items 2e1 and 2e2 and Section 62.1109, Items 2g1 and 2g2, Standards for Quarries and Substantial Land Alteration, respectively.

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3. Removal of the 6-foot continuous security fence requirement around the perimeter of the property as specified in the operations/performance reclamation standards in Section 62.1107, Item 1i.
4. Reduction of minimum distance requirements as specified in Section 62.1107, Item 1j Standards for Quarries, Operations/Performance Standards for an excavation area with an elevation change of greater than 10-feet. Excavating of a 10-foot plus elevation change will take place within 100-feet of a commercial/industrial zoned property and within 500-feet of a residentially zoned property.
5. Reduction of minimum distance requirements as specified in Section 62.1107, Item 1j Standards for Quarries, Operations/Performance Standards to any crushing or processing. Crushing activity may take place within 500-feet of a commercial/industrial property and within 1,000-feet of an undeveloped R-2 zoned property. Refer to comment at end of Item 6, below.
6. Reduction of minimum distance requirements as specified in Section 62.1107, Item 1j Standards for Quarries, Operations/Performance Standards to any blasting from a developed property; blasting may occur within 500-feet of a commercial/industrial zoned land use. The blasting variance request has been submitted as the commercial/industrial-zoned West 80 Development, south of the project, may be under development at the time of Willow Creek Commons construction commencement. If this is the case and blasting is necessary, the variance will be applicable.

It is anticipated that the variance requests will be heard concurrently with this CUP application at the September 10, 2003 Planning Commission meeting.

Proposed Excavation Activities

The following excavation activities are proposed on the project site:

- Movement of earth exceeding 100,000 cubic yards and involving a change in pre-existing grades of 10 or more vertical feet (substantial land alteration).
- An excavation activity utilizing a crusher (quarry operations).

Disturbed Area

The project will disturb approximately 69-acres containing four properties. Properties are owned by B&F Properties, LLC, Willow Creek Commons, LLC, Franklin P. Kottschade and SJC Properties, LLC.

Amount of Material to be Moved

Approximately 600,000 cubic yards of material will be moved as a part of the Willow Creek Commons development.

Assessment of Existing/Pre-Alteration Conditions

Information required by Section 62.1106, Paragraph 2, is included on the plans and supplemented with the following.

Existing Zoning:	M-1 Mixed Commercial-Industrial
Previous Zoning:	R-1 Residential
Existing Site Use:	Agricultural/cropland and pasture; permitted mining operations.
Soil Types:	See attached geotechnical report.

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- Water Wells:** There are no known water wells on the site. An abandoned well is identified on the West 80 Development site to the south. The Minnesota Department of Health has been contacted regarding any other wells within ½ mile of the property.
- Wetlands:** The existing wetlands on the site have been delineated and mitigated as part of a previous approved permit. No additional impacts are anticipated with the project.
- Utilities:** A public sanitary sewer trunk line and public watermain are located on the site along the east boundary within the proposed MnDOT right-of-way.
- Traffic:** A traffic analysis was previously prepared for MnDOT for the design of the TH 63/40th Street improvements. The traffic analysis addressed transportation needs of the developed project site.
- Adjacent Land Use:** The land to the north of 40th Street is zoned R-1/R-2 residential. The parcel to the west of the property is zoned M-1 commercial/industrial. The property to the south of the project site is the proposed West 80 Development project, which is proposed for M-1 commercial/industrial zoning. The property to the east of TH 63 is also zoned M-1 commercial/industrial. There is a small property to the southeast across TH 63 that is zoned B-4 commercial. The property directly to the north is undeveloped and within the Willow Creek open area, which is zoned R-1 residential. A strip of R-2 zoning is located between the R-1 district and 40th Street.

Grading and Drainage

The applicant/developer proposes to rough grade the site for ultimate development in phases. The Grading Plan identifies approximate limits and earthwork quantities of the proposed phases as described below:

- Phase 1:** Includes fill over the south half of the proposed frontage road (identified in the City of Rochester transportation plan as Commercial Drive SW) with material excavated from the West 80 Development on the south. Also constructed with Phase 1 will be fill for potential development outside the floodplain limits in the northwest portion of the property. Trucking of the material will not require travel outside the limits of the two sites; therefore haul routes on the public roadway system are not required. The project grading is expected to be concurrent with grading on the West 80 Development parcel.
- Phase 2:** Includes fill for the remainder of the proposed frontage road and adjacent area on the west from the Phase 1 area to 40th Street, including fill within the existing floodway and flood fringe. Fill within the floodway will be limited to what is required for the frontage road grading. Fill material will be provided from the West 80 Development. A CUP application has been submitted concurrently with this application for fill within the existing floodway and flood fringe that will occur prior to the completion of the 40th Street improvements and TH 63 overpass and associated removal of that portion of the site from the floodway and flood fringe. The temporary roadway within the floodway will be graded without impacting the floodway water elevations.

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Phase 3

Includes cut of the southwesterly-elevated portion of the site for use as fill in the central portion of the project. The portion of Phase 3 within the existing floodway will be phased to receive fill after the 40th Street improvements are completed and the area is no longer within the floodway.

Grading of the site will occur over several years, and will not be completed until after the 40th Street improvements are completed. The majority of the project will be graded within 24 months.

Drainage for the site will be accommodated in a number of proposed stormwater ponds. Future design will provide for ponds that meet National Urban Runoff Program (NURP) standards. A portion of the runoff will be directed into the proposed MnDOT storm pond in the southwest quadrant of TH 63 and 40th Street; this pond will be constructed with the 48th Street improvements project recently awarded by MnDOT. The proposed MnDOT pond was designed to accommodate the existing site runoff conditions as identified in the Conditional Letter of Map Revision (CLOMR) analysis prepared for MnDOT for the adjacent roadway improvements project. The remainder of runoff calculated for the proposed conditions will be treated in a storm pond or ponds designed with the future site development; these ponds will discharge into Willow Creek. Detention and treatment requirements will be coordinated with City staff at the time of site plan development.

Temporary sedimentation treatment for the graded site will be provided in the existing wet pond in the previously mined area on the north side of the project, prior to discharging site runoff into Willow Creek. A swale will be graded along the west side of the proposed frontage road to capture site runoff and carry it into the existing pond to remove sediment. Other erosion and sediment control measures will be implemented including typical measures as illustrated on the grading plan. As future final site plan improvements are planned, associated erosion and sediment control measures will be proposed and implemented as required.

Operations Plan per Section 61.140

The site plan illustrates the proposed project area, stockpile locations, erosion control and the proposed frontage road. Earthwork operations will occur within 50 feet of existing and proposed public right-of-way including grading of the frontage road and grading of the frontage road connection within 50 feet of 40th Street. A variance has been requested to grade within the 50-foot bufferyards along the West 80 Development project on the south, adjacent to the undeveloped property on the west and north, and along TH 63 and 40th Street on the north and east for the public frontage road construction.

Hours of operation shall be limited to the hours of 7:00 a.m. through 10:00 p.m., as allowed by City Code.

The overall grading plan identifies phases and approximate quantities of material that will be moved within the site and from the West 80 Development. Interim grading permit applications will be submitted in the future to further clarify specific limits and quantities of each phase of grading.

Excess material that may be available from the Phase 3 cut area may be utilized on the parcel to the west in the future or disposed of at other locations. Permit applications will be submitted in the future as plans are developed. The amount of material excavated from the Phase 3 cut area will be clarified as part of an interim grading permit application.

The contractor shall stabilize each phase of grading through resspreading topsoil and seeding. The existing pond will be left in-place to provide sediment removal as required until final surface improvements are completed on the site.

Vegetation will be removed by typical clearing methods and disposed of by the contractor in a lawful manner.

The Contractor will be responsible for implementation of dust and noise control plans. Dust control measures include watering of on-site haul roads. Noise control measures include operational mufflers on equipment to meet state and local noise ordinance requirements. The project site is naturally buffered by undeveloped property on the west and the West 80 Development site to the south is currently under permit review and will likely be under construction concurrent with the project site. In addition, TH 63 is east of the project site and the Willow Creek open area and floodway lie to the north and west. MnDOT's proposed property construction and acquisition area along 40th Street is north of the project site.

Limited blasting may be required on an "as-needed" basis for excavation of the rock material in the southwest portion of the project area. A variance has been requested due to the distance of the possible activities to the undeveloped residential and commercial properties adjacent to the project on the south.

If required, a signage plan for construction activities will be submitted as part of the grading permit application.

Stormwater runoff, erosion and sedimentation control for the rough graded site are identified on the Preliminary Grading Plan. Final drainage and erosion control improvements will be designed with the future final site development as part of land subdivision permitting and final platting.

Due to the isolated nature of the project area, site fencing or additional security measures are not anticipated as necessary; a variance has been requested for the removal of the 6-foot continuous security fence requirement.

Anticipated construction equipment includes backhoes, dozers, front-end loaders, dump trucks, scrapers, rubber tired rollers, a rock crusher for limestone, and other construction equipment as required for completion of the project. A variance has been requested due to the distance of the possible crushing activities to the undeveloped residential and commercial/industrial properties adjacent to the project on the south.

The following sequence of progression is proposed:

- Install erosion control measures;
- Clear site within current excavation phase limits;
- Strip topsoil and stockpile;
- Excavate muck (phase 2 and 3 only);
- Cut material and process/screen (phase 3 only);
- Truck and scraper material to fill area;
- Grade and compact engineered fill;
- Respread topsoil and seed area within 7 days of completion of fill;
- Adjust erosion control fencing and other measures after turf has been established.

Lighting is not anticipated to be required.

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Current plans do not include any off-site hauling of material; therefore, there is no daily quantity of material to be removed or planned haul routes. If during future site planning, excess material is proposed to be hauled off-site, appropriate haul routes to the ultimate destination(s) will be identified and proposed with the associated permit applications. Currently permitted mining operations on the site will continue to haul material as permitted.

With the proposed erosion control and sedimentation measures, there are no off-site impacts anticipated due to the construction.

The contractor will monitor the condition of off-site roadways on a daily basis and clean/remove any dirt from the paved surfaces caused by project traffic.

The project will require water for use in dust control; water will be obtained from the existing pond. No electric, sanitary or communications utilities are anticipated to be required. Portable sanitary facilities will be provided. As required, generators will be used to power equipment.

The nearest police station is located at 3rd Avenue and 4th Street SE. The nearest fire station is located at 6th Street and South Broadway. Site access will be available via an existing access road from 40th Street until the proposed frontage road connection is graded or MnDOT removes this access with their proposed storm pond construction at the southwest quadrant of TH 63 and 40th Street.

Reclamation Plan and Report

Requirements for reclamation are identified on the Overall Grading and Reclamation Plan and in the above text.

A variance has been requested for landscape requirements of the reclamation plan, due to hardship imposed by the MnDOT improvements to 40th Street and the adjacent West 80 Development project as noted above. Permanent landscape and tree requirements will be identified and provided with future land subdivision permitting and final platting development. All erosion control, turf establishment and drainage facilities as required by the phased development and all applicable City requirements will be provided.

Attachments

- Narratives for Variance Requests
 - Removal of 50-Foot Bufferyard Requirement
 - Removal of Landscape Requirement
 - Removal of 6-Foot Continuous Security Fence Requirement
 - Reduction of Minimum Distance requirement for an Excavation Area with an Elevation Change of Greater than 10-Feet
 - Reduction of Minimum Distance Requirement to any Crushing or Processing
 - Reduction of Minimum Distance Requirement to any Blasting from a Developed Property

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Project Team

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